

### **Remarks**

Claims 1, 9-13, 21-28 and 30-31 are pending in this application. Claims 1, 9, 13 and 21 and 30 are independent claims.

Independent claim 1 has been amended to remove all of the alternative operational statuses except an indication of N messages most frequently received at the device, where N is a integer. Analogous amendments have been made to independent claims 9, 13 and 21.

Claims 3-5, 8, 15-17, 20, and 29 have been cancelled without prejudice or disclaimer.

New claims 30 and 31 have been added. Claims 30-31 correspond substantially with claims 9 and 26 respectively but are directed to a computer-readable medium. The new claims are supported in the original application, e.g. at original specification paragraphs 0014 and 0042, as well as in the aforementioned claims.

At paragraph 3 of the Office Action, claims 3-5, 8, 15-17 and 20 were objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. The Applicant submits that the objection has been rendered moot by the cancellation of each of these claims.

In view of the amendments to claim 1, the Examiner might now consider the rationale for rejecting former claim 3 to apply to claim 1. If that is the case, then the Applicant traverses the rejection for the following reasons.

In the Final Office Action dated December 10, 2009, claim 3 was rejected 35 USC 103(a) as being unpatentable on the basis of (in part) US 2006/0195912 to Dew et al. ("Dew"). In the Applicant's response dated March 8, 2010, the Applicant submitted that the rejection of these claims was unsupported because the limitation purportedly disclosed in Dew, i.e. "wherein said operational status of the wireless communication device comprises said indication of N messages most frequently received at said device", was actually not disclosed in that reference.

The Examiner did not accept the above submission, although the reasons for non-acceptance were, at best, unclear. In the Advisory Action mailed on April 13, 2010, the Examiner stated, at paragraph 4 (continuation sheet), that Dew paragraph 0035 teaches "a number of previously received e-mail messages are examined, wherein the number of e-mails examined may be a fixed number or may include all e-mails received after a given date." It was further stated that this could be broadly interpreted "as identifying N messages that are most frequently received, as claimed." There was no explanation provided as to how that disclosure supports that broad interpretation, merely a bald assertion that it was supported.

In the Applicant's response dated May 10, 2010, the Applicant traversed the Examiner's reasoning. It was submitted that, even with a broad interpretation, the quoted language of Dew simply does not disclose the relevant limitation. The reason is that nothing in Dew 0035 suggests that the examining is done with a view to identifying messages most frequently received at the device, or that an operational status indicative of the N most frequently received messages will result. It was further pointed out that, indeed, the subsequent paragraph 0036 of Dew suggests that the "examining" referred to in paragraph 0035 is for a different purpose, i.e. compiling information regarding the email addresses or domain names from which received email messages most frequently originate. As noted in the Applicant's amendment dated March 8, 2010, page 3, that is not the same as identifying the N messages that are most frequently received because, even if a particular email address or domain name is a frequent source for email, the messages could all be different (e.g. some may be status updates, others may be requests for information, still others may be personal greetings, etc.). Thus the relevant limitation is simply not shown.

The Examiner never responded to the above argument. Rather, the Examiner merely reasserted the rejection. In so doing, the Examiner has failed to fulfill his responsibility under MPEP 707.07(f), which requires that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."(emphasis added). Thus, the Applicant expressly requests consideration of the argument and, if the

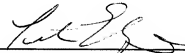
rejection is maintained, a clear indication of precisely how Dew paragraph 0035 can possibly be considered to disclose the relevant claim feature.

Based on the foregoing, the Applicant submits no *prima facie* obviousness has been established for claim 1, at least by virtue of the relevant claim feature not having been shown in the art. This reasoning applies not only to claim 1, but to all of the independent claims (including new claim 30), by virtue of their incorporation of similar limitations to claim 1. Withdrawal of the rejections of the independent claims is therefore requested.

Given that the independent claims distinguish over the cited art, the remaining claims, which depend from the independent claims, also distinguish over the art of record.

In view of the foregoing, favorable reconsideration and allowance of the application are earnestly solicited.

Respectfully submitted,



Peter Elyjiw  
Registration No. 58,893

**SMART & BIGGAR**  
438 University Avenue  
Suite 1500, Box 111  
Toronto, Ontario  
Canada M5G 2K8  
Telephone: (416) 593-5514  
Facsimile: (416) 591-1690